

## REMARKS

The last Office Action dated 9/29/2004 has been carefully considered. The Applicant appreciates the Examiners guidance in the telephone interview of 2/17/2005. The following statements are intended to serves as Summary of the Interview. Alternative claim language was discussed that would distinguish the central cavity in the device of **Johns** from the Applicants invention. It was pointed out to the examiner that Fig. 3 in **Johns** appears to be incorrectly drawn, as the direction of the pipe, A, should be opposite to correspond with FIG. 1, as well as the written description, otherwise the devise taught by **Johns** is inoperative. The Applicant also pointed out that **White** and **Clark** cannot be combined as suggested by the Examiner, as **Clark** does not provide a means to accommodate the placement of the nails without interfering with the tightening of bolt B. The applicant revised claims now reflect the structures required for this combination, which are absent in both the **White** and **Clark** references.

A revision to FIG. 1E is being proposed in response to the Examiner's objection, as requested.

It is noted that **Claims 1-13**, are rejected under 35 U.S.C. § 102 as being anticipated by **Johns** (U.S. Pat. No. 2,252,379).

It is further noted that claims **1, 2, 5, 9, 10, 13, 14** and **17** are rejected under 35 U.S.C. § 102 as being anticipated by **Clark** (U.S. Pat. No. 532,027).

It is further noted that claim **16** is rejected under 35 U.S.C. §102 as being anticipated by **Dashner** (U.S. Pat. No. 1,081,661)

It is further noted that claim **3, 4, 6, 11, 12** and **15** are rejected under 35 U.S.C. §103 (a) as being unpatentable over **Clark** in view of **White** (U.S. Pat. No. 718,744).

Applicant believes that **Clark** teaches a much more complex invention than the invention of the present application, by focusing on complex embodiments such as the means for locking nut E into washer G via key F. Thus, applicant believes that Clark teaches away from the simplicity of the present invention, which provides a solution to the problem of the mechanical joining of wooden structures with a minimum number of distinct components. More specifically, it should be noted that the applicant teaches the use of a single washer type fastener that operate with both an ordinary nut and bolt, whereas Clark requires two distinct type fasters/washers that requires a special nut, G, and a special locking key, F. *See In re Baird*, 16 F.3d 380, 29 USPQ2d 1550 (Fed. Cir. 1994) (prior art reference “appears to teach away from the selection of” the claimed composition “by focusing on more complex examples”). The fact that a simple solution has escaped other workers in the art is some evidence that it was **not obvious** to a person of ordinary skill in the art. *See In re Shelby*, 311 F.2d 807, 810, 136 USPQ 220 (CCPA 1963):

Appellant’s claimed invention departs from the prior art in the direction of simplicity rather than in the direction of complexity. . . . The simplicity of this useful invention is, in retrospect, some evidence that it was not obvious to a person of ordinary skill in the art . . . . *In re Osplack*, 39 CCPA 932, 195 F.2d 921, 93 USPQ 306. . . . While it is admittedly simple, it has escaped the other workers in this crowded art. We do not think the simplicity of appellant’s construction should deprive him of his right to a patent thereon. *Expanded Metal Co. v. Bradford*, 214 U.S. 366.

New claim 18 claims a fastener with a polygonal shaped cavity of uniform lateral cross-section, which is not disclosed in **Johns**. **Johns** discloses a devise and method for latching a guy anchor to extend upward from a mounting plate. The guy anchor is a pipe with a square base attached to the pipe end by threads. The square base is inserted downward into the base, and then rotated to lock, as in a bayonet style mount. The applicant wishes to assert that not only is **Johns** not analogous art, but that it would be inoperative with respect to applicants invention as now claimed, as the wherein the fastener is limited to have "a polygonal shaped cavity of uniform lateral cross-section". The uniform lateral cross-section precludes the bayonet style locking taught by **Johns**. Therefore, it is respectfully submitted that **Johns** is not relevant to the present invention. Applicant believes, therefore that **White** teaches away from using a washer that also locks the bolt head or nut, as it discloses that a washer, C, in Fig. 1, must also be used with the locking cap. A reference should be considered as a whole, and portions arguing against or teaching away from the claimed invention must be considered. *See Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 230 USPQ 416 (Fed. Cir. 1986).

In view of the Examiner's rejection of the claims over the art, Applicant has **CANCELLED Claims 1-17**, without prejudice or disclaimer, and has **ADDED Claims 18 - 38** further include the limitations and clarification to overcome the prior art.

It is respectfully submitted that the new **claims 18 - 38** clearly and patentably distinguish over the prior art, since it is believed that the construction defined in these claims differs essentially and in an unobvious, highly advantageous manner from the constructions disclosed in the references. Applicant believes that combining the

references discussed above would not lead to the claimed invention, in that the present invention does not merely employ the known substitution of equivalents but rather employs a new, non-obvious combination to accomplish the objectives set out in the present application.

As for the proposed combination of references cited by the examiner, it is respectfully submitted that since none of the references in the combination teaches the distinctive features of applicant's invention as defined now in the new **claims 18- 38**, any hypothetical construction produced by this combination would not lead to applicant's invention.

It is respectfully submitted that the combined teachings of the references applied by the Examiner fail to disclose or even suggest the subject matter of the claims at issue. That a prior art reference could be modified to form the claimed structure does not supply a suggestion to do so. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989).


In view of these considerations, it is respectfully submitted that the rejection of the original claims should be considered as no longer tenable with respect to the new claims 15-16 and should be withdrawn. The new **claims 18-38** should be considered as patentably distinguishing over the art and should be allowed.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully asked that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. Alternatively should the Examiner feel that a

personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned.

The Applicant requests an extension of time, according the fee \$ 225 for such an extension of 2-months, is enclosed herewith.

Respectfully submitted:

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### **IN THE FIGURES**

A proposed correction to the drawing sheet containing FIG. 1E is attached, showing the ribs in cross-section. A higher quality formal drawing is being mailed under separate cover. Please note that FIG. 1C is also revised, as FIG.1E and FIG. 1C were initially reversed.